

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 11/21/2001
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a new information collection received on 11/13/2001.

TITLE: Steller Sea Lion Revisions to Alaska Federal Fisheries Permit

AGENCY FORM NUMBER(S): None

ACTION : APPROVED

OMB NO.: 0648-0444

EXPIRATION DATE: 05/31/2002

BURDEN	RESPONSES	BURDEN HOURS	BURDEN COSTS
Previous	0	0	0
New	539	9	0
Difference	539	9	0
Program Change		9	0
Adjustment		0	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

EMERGENCY SUPPORTING STATEMENT STELLER SEA LION REVISIONS TO FEDERAL FISHERIES PERMIT

INTRODUCTION

Beginning with the passage of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.* (Magnuson Act-Stevens) as amended through October 11, 1996, the Secretary of Commerce (Secretary) has undertaken a set of objectives for the conservation and management of marine fishery resources. Under this stewardship role of one of the Nation's natural resources, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is the requirement for permits for users of the resources.

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI). The Magnuson-Stevens Act authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans (FMPs) for any fishery in waters under its jurisdiction. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species. As required in the reasonable and prudent measures (RPMs) in the ESA Section 7 biological opinion on the effects of the BSAI and GOA pollock, Atka mackerel and Pacific cod fisheries on the endangered Steller sea lions (SSL), NMFS must implement changes to information collected from fishery participants to enable NMFS to identify which vessels are directed fishing in the Pacific cod, pollock and Atka mackerel fisheries and to require these participants to install vessel monitoring system (VMS) units by June, 2002 (OMB Control No. 0648-0417 will be revised). These regulatory changes will be implemented by emergency interim rule for 2002 and included in permanent rulemaking scheduled for 2003. This additional requested information will allow NMFS to manage the Atka mackerel fleet in order to slow down the rate of fishing in Aleutian Island critical habitat (CH) and to allow NMFS to track and enforce locations of important Steller sea lion prey species harvest in BSAI and GOA. The decrease in Atka mackerel fishing rate will be accomplished by (1) platooning of vessels and (2) increased observer coverage.

A system of "platoon" management will be implemented for critical habitat fishing in Areas 542 and 543 (central and western AI). The annual Atka mackerel total allowable catch (TAC) will be split into two equal season allocations with no more than 60% of the TAC removed from CH. The participating vessels are required to "register" with NMFS to fish in either A or B or both

seasons through new questions on the Federal fisheries permit. Each such vessel would be randomly assigned to one of two “platoons” (or teams) within an area. Each platoon would, in effect, be allotted half of the available TAC “inside CH”, for each of these two management areas, establishing two directed fisheries, per area, per season. The “platoon’s” TAC share will be proportional to the number of vessels in each platoon, compared to the total number of vessels registered to fish in the area. Each platoon will be authorized to fish in the assigned directed fishery in an area for a time period dependent upon the respective area’s TAC apportionment and the fishing capacity of the vessels in the platoon. Vessels registered to fish during a season in both 542 and 543 would switch areas after the closure of the first directed fishery. If registered to fish in 542 or 543 and the operator declines to fish for any reason, the vessel may not participate in any other fishery in the BSAI or GOA until 542 and 543 are closed to directed fishing.

Because up to 75% of the Atka mackerel biomass occurs in CH, platooning balances the need for a larger share of the Atka mackerel TAC to come from CH, with the requirement that instantaneous effort and removal levels within CH, in any given statistical area, be controlled. Platooning, as recommended by the Reasonable and Prudent Alternatives Committee, helps to reduce effort levels in CH to approximately half of its maximum potential level, based on the number of vessels which choose to participate in a given opening, thus yielding the requisite SSL conservation and protection objectives which underlie the proposed SSL Protection Measures.

Observer coverage requirements would be modified to provide data for effective in-season management of the fishery. Each participating vessel will carry two observers, per vessel, during the entire period when CH is open to the Atka mackerel target fleet. This is not a trivial additional operating cost. Carrying two certified observers fully doubles the traditional fishery observer expenditures for each vessel. The expectation is, however, that the value of access to the Atka mackerel resource inside CH in management areas 542 and 543 (in terms of improved CPUE, bycatch avoidance, and thus increase potential for TAC attainment) will more than compensate for the additional observer outlays.

JUSTIFICATION

This emergency collection of information will be combined with OMB control No. 0648-0206.

1. Explain the circumstances that make the collection of information necessary.

As required in the reasonable and prudent measures (RPMs) in the ESA Section 7 biological opinion on the effects of the BSAI and GOA pollock, Atka mackerel and Pacific cod fisheries on the endangered Steller sea lions, NMFS must implement changes to information collected from fishery participants and to require these participants to install vessel monitoring system (VMS) units and to obtain increased observer coverage by June, 2002 . These applicants already are required to obtain the Federal fisheries permit and to complete the application to obtain a Federal fisheries permit. This emergency collection of information requests a few additional questions

on the Federal fisheries permit application to enable NMFS to identify which vessels will be directed fishing in the Pacific cod, pollock and Atka mackerel fisheries.

OMB Control No. 0648-0417 provides OMB clearance for the use of VMS when directed fishing for Atka mackerel. OMB Control No. 0648-0425 provides OMB clearance for the use of VMS when directed fishing for pollock. The requested collection would allow NMFS improved management of the Atka mackerel fleet by slowing down the rate of fishing in Aleutian Island CH and to allow NMFS to track and enforce locations of important Steller sea lion prey species harvest. The decrease in Atka mackerel fishing rate will be accomplished by (1) platooning of vessels and (2) increased observer coverage.

Experience has shown that fines for violations of specific fishery regulations are not as effective as the threat of a permit revocation that would exclude the participant from the fishery altogether. Fines for fishing activity without a permit are more substantial and easier to enforce than fines for other violations. Vessels may be willing to pay the lower fines if the violation brings enough economic benefit, but do not want to be excluded from the fishery.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The information is collected on paper application forms and submitted by participants to NMFS Restricted Access Management (RAM) Program, Juneau, Alaska. This collection-of-information provides NMFS Alaska Region a means to uniquely identify the vessel and owner of the vessel and to monitor directed fishing in the Atka mackerel, pollock, and Pacific cod fisheries in the EEZ off Alaska. The information requested on the permit application forms is used by the U.S. Coast Guard (USCG) North Pacific Region and fishery management agencies including NMFS Sustainable Fisheries Division, NMFS RAM, NMFS Observer Program, NMFS Office of Enforcement, and North Pacific Fisheries Management Council.

NMFS revises the application for the Federal fishery permit (FFP) as follows:

(1) In Block A, a sentence is added to direct the participants in the Pacific cod, pollock, or Atka mackerel fisheries to also complete new Block F. In both the form and in the accompanying instructions.

(2) In Block E(4) on form, a sentence is added to direct the participants using gear other than jig gear in the Pacific cod, pollock, or Atka mackerel fisheries to also complete new Block F. And also the accompanying instructions.

(3) Renumber Block F to G.

(4) Add new Block F on form, entitled "Pacific cod, pollock, Atka mackerel fisheries"; add instructions and boxes to check the area(s) requested for each of Pacific cod, pollock, and BSAI Atka mackerel. Add descriptive text to accompanying instructions. If participant is using non-jig gear:

(a) Indicate whether requesting BSAI, GOA, or both for Pacific cod or pollock

- (b) Indicate whether requesting inside Aleutian Islands critical habitat in statistical area 542 or 543 for BSAI Atka mackerel.
- (c) If any one or all of these species is selected, a VMS is required onboard the vessel (see OMB No. 0648-0417).

Once this endorsement is elected, it remains valid until amended (or the permit expires or is revoked, suspended, etc.). Changes to the Atka mackerel fisheries registration must be received by RAM no later than 30 days prior to the start of the A or B season. A lottery performed by Alaska Region will determine placement in either 542 or 543 in "platoons" in each of two seasons (A season and B season). If information from this request changes, a request for revised permit must be submitted to NMFS.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The NMFS Federal fisheries application collects information from the owners of vessels. The applications may be downloaded and printed off the NMFS web site. Methods of completing a Federal permit application online through the NMFS Alaska Region Website are being investigated and are scheduled to be in effect by 2003.

4. Describe your efforts to identify duplication with other collections.

No duplication exists with other information collections.

5. If the collection will have a significant impact on small entities such as small businesses, organizations, or government bodies, describe the methods used to minimize the burden on them.

The revised collection-of-information does not impose a significant impact on small entities.

6. Describe the consequences to Federal program or policy activities if the collection would not be or would be conducted less frequently.

If the information was not collected for the Federal fisheries permit, NMFS could not effectively monitor and enforce commercial harvests of the species for which it has stewardship. Without these 'effort' and 'TAC' apportioning provisions (that slow the fishery and allow it to fish for more than the current 40% of TAC in CH), the available amount of harvestable Atka mackerel would not be sufficient to support a commercial fishery, given the much reduced catch per unit effort (CPUEs) outside of CH in the Central AI and Western AI management areas; high bycatch rates of rockfish outside CH (which will lead to premature closures of the directed fishery before the TAC is attained); and the catching capacity of the C/Ps which fish this resource. This would likely mean that some or all of this capacity would be displaced into the flatfish fisheries, with significant and immediate adverse economic and structural implications for those existing fleets.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the OMB guidelines.

No special circumstances exist.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

An emergency interim final rule is being submitted coincidental with this revision request and will solicit comments.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is provided under this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for this assurance in statute, regulation, or agency policy.

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics. These procedures have been implemented under the NMFS Operations Manual entitled, "Data Security Handbook for the Northwest-Alaska Region, National Marine Fisheries Service."

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The additional questions are not of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The total number of all vessels that would be affected by the VMS requirement, based on the 1999 fishery numbers published in the draft Steller Sea Lion SEIS, is 539. All of these vessels already complete the application but must complete these new questions also. At an estimate of 1 minute per participant, 539 minutes or 9 hours additional annual burden is required.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

No additional cost burden is anticipated.

14. Provide estimates of annualized cost to the Federal government.

No additional cost burden is anticipated.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

Additional information is collected from fishery participants to enable NMFS to identify which vessels are directed fishing in the Pacific cod, pollock and Atka mackerel fisheries and to require these participants to install vessel monitoring system (VMS) units by June, 2002. This additional requested information will allow NMFS to slow down the rate of fishing for Atka mackerel fleet in Aleutian Island critical habitat (CH) and to allow NMFS to track and enforce locations of important Steller sea lion prey species harvest in BSAI and GOA. The burden is a program change.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information obtained from Federal fisheries permits and Federal processor permits are not planned to be published for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

In accordance with OMB requirements, the control number and expiration date of OMB approval will be shown on all forms associated with this program.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions to the certification statement exist.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.



**APPLICATION FOR
FEDERAL FISHERIES PERMIT
FEDERAL PROCESSOR PERMIT**

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Alaska Region
Restricted Access Management
P.O. Box 21668
Juneau, Alaska 99802-1668



BLOCK A - PERMIT APPLICATION INFORMATION

Please indicate the type of permit for which you are applying:

- ☐ Federal Fisheries Permit
☐ Federal Processor Permit (shoreside processors and stationary floating processors)

All Applicants for a **Federal Fisheries Permit** must complete Block B, Block C, and Block E. If you plan to participate in directed fisheries for Pacific cod, pollock and/or Atka mackerel with any gear type other than jig gear you must also complete Block F. If ownership of the vessel listed in Block C has changed or if this is a permit application for a vessel to which a Federal Fisheries Permit has never been issued a copy of the U.S. Coast Guard Abstract of Title or Certificate of Documentation must be included with this application. Applicant must sign and date the application in Block G. See application instructions for more detailed information.

Applicants for a **Federal Processor Permit** must complete Block B, Block C (stationary floating processors), or Block D (shoreside processors), and Block E. Applicant must sign and date the application in Block G. See application instructions for more detailed information.

Is this application being submitted in order to amend an existing Federal Fisheries or Federal Processor Permit? ☐ Yes ☐ No

If yes, please provide your current Federal Fisheries Permit number or Federal Processor Permit number _____

BLOCK B - OWNER INFORMATION

1. Owner Name(s)

2. Business Mailing Address (street or P.O. Box, city, state, zip code)

3. SSN or Tax I.D. (SSN Voluntary)

4. Business Telephone Number

5. Business Fax Number

6. Business E-Mail Address

7. Managing Company Name (If any)

BLOCK C - VESSEL OR STATIONARY FLOATING PROCESSOR INFORMATION

1. Vessel Name

2. Home Port (city and state)

3. U.S. Coast Guard Documentation Number

4. ADF&G Vessel Registration Number

5. ADF&G Processor Code

6. Length Overall (ft) _____
Registered Length (ft) _____

7. Gross Tonnage _____
Net Tonnage _____

8. Shaft Horsepower

9. Is this vessel a vessel of the United States?
☐ Yes ☐ No

10. Will this vessel be used as a stationary floating processor?
☐ Yes ☐ No

BLOCK D - SHORESIDE PROCESSOR INFORMATION

1. Name of Shoreside Processor

2. Business Address of Shoreside Processor

3. a. **Physical location** of plant at which this shoreside processor is operating (no Post Office boxes)

b. Is this shoreside processor replacing a previous processor at this facility?

☐ Yes ☐ No Name of previous processor _____c. Are there multiple processors using this facility? ☐ Yes ☐ No4. Does the owner named in Block B own the plant in Block D, question 3? ☐ Yes ☐ No

5. ADF&G Processor Code

6. Business Telephone Number

7. Business Fax Number

8. Business E-Mail Address

BLOCK E - PERMIT INFORMATION

1. Area of Operation. Check one or both areas of operation, as appropriate.

☐ Gulf of Alaska ☐ Bering Sea and Aleutian Islands**2. FEDERAL FISHERIES PERMIT**

If requesting a Federal Fisheries Permit, indicate the type(s) of vessel operation you request in the federal groundfish fishery. A Federal Fisheries Permit may be issued for any combination of catcher vessel, catcher-processor, mothership, and/or tender vessel. In addition, a Federal Fisheries Permit may be issued for a support vessel.

Check one or any combination of the following operation types that apply:☐ Catcher Vessel☐ Catcher-Processor☐ Mothership☐ Tender Vessel (buying station)

A vessel permitted as a catcher vessel, catcher-processor, mothership, and/or tender vessel may conduct all operations authorized for a support vessel.

Or check:☐ Support Vessel

A vessel permitted as a support vessel may not conduct activities as a catcher vessel, catcher-processor, mothership, and/or tender vessel.

BLOCK E - PERMIT INFORMATION - CONTINUED**3. FEDERAL PROCESSOR PERMIT**

If requesting a Federal Processor Permit, indicate whether a shoreside processor or stationary floating processor.

☐ Shoreside Processor

☐ Stationary Floating Processor

4. GEAR TYPES (catcher vessels and catcher-processors only)

Check only the gear types used for groundfish fishing: ☐ Trawl ☐ Hook and line ☐ Pots ☐ Jig ☐ Troll

You must complete Block F if you plan to participate in the directed fisheries for Pacific cod, pollock and/or Atka mackerel with any gear other than jig gear.

5. INSHORE/OFFSHORE (Gulf of Alaska catcher-processors and motherships only)

Choose inshore or offshore (allocation component) appropriate for the vessel designated in Block B.

☐ Inshore ☐ Offshore

You may not have more than one designation during a given year.

BLOCK F - PACIFIC COD, POLLOCK, ATKA MACKEREL FISHERIES

Indicate below whether you plan to participate in any of the following directed fisheries. Effective June 11, 2002 vessels participating in these fisheries must have a vessel monitoring system (VMS) operable while the directed fishery is open. Registration requirements for the directed Atka mackerel fisheries inside Steller sea lion critical habitat areas become effective January 2002. See instructions for more information on VMS requirements and AI Atka mackerel fisheries registration. Please note: Your selections will remain valid until amended by submission of a new federal fisheries permit application.

☐ Pacific Cod

☐ Gulf of Alaska

☐ Bering Sea/Aleutian Islands

☐ Both

☐ Pollock

☐ Gulf of Alaska

☐ Bering Sea/Aleutian Islands

☐ Both

☐ BSAI Atka mackerel

☐ AI critical habitat:

☐ Statistical Area 542

☐ Statistical Area 543

BLOCK G - SIGNATURE

Under penalties of perjury, I hereby declare that I, the undersigned, completed this application, and the information contained herein is true, correct, and complete to the best of my knowledge and belief.

Applicant Name (please print or type)

Signature

Date

Privacy Act Statement: Federal regulations at 50 CFR part 679 authorize collection of this information. This information is used to verify the identity of the applicant(s) and to accurately retrieve confidential records related to federal commercial fishery permits. Where the requested information is a Social Security number (SSN), disclosure is voluntary; in the event it is not provided, NMFS will assign a unique code that will identify the records.

PUBLIC REPORTING BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 0.35 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NOAA, National Marine Fisheries Service, Alaska Region, Attn: Assistant Regional Administrator, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99801-1668.

ADDITIONAL INFORMATION

Before completing this form please note the following: 1) The NMFS may not conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) This information is mandatory and is required to manage commercial fishing effort in the GOA and BSAI under 50 CFR 679 and under 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et. seq.*); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et. seq.*) It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics. These procedures have been implemented under the NMFS Operations Manual entitled, "Data Security Handbook for the Northwest-Alaska Region, National Marine Fisheries Service."



**INSTRUCTIONS
APPLICATION FOR
FEDERAL FISHERIES PERMIT
FEDERAL PROCESSOR PERMIT**



General Information

- ✓ Complete a separate application for each vessel or processor. Application forms and instructions are also available on the NMFS Alaska Region web site at www.fakr.noaa.gov.
- ✓ A copy of the U.S. Coast Guard Abstract of Title or Certificate of Documentation **must be included** with this application if ownership of the vessel listed in Block C has changed or if this is an application for a vessel to which a Federal Fisheries Permit has never been issued
- ✓ Type or print legibly in ink.
- ✓ Retain a copy of completed application for your records.
- ✓ Mail or deliver completed forms to: **NMFS Alaska Region, Restricted Access Management (RAM) Program, P.O. Box 21668, Juneau, AK 99802-1668**. Applications can be faxed to RAM at (907) 586-7354; however, permits cannot be faxed back.
- ✓ If you have questions about these permits, please call RAM toll free at (800) 304-4846 (select option 2) or (907) 586-7202 (select option 2).

Federal Fisheries Permits are required for all vessels conducting groundfish operations and/or retaining groundfish while targeting non-groundfish in the 3-200 mile zone off Alaska (see 50 CFR 679.4). This includes vessels fishing for groundfish, vessels processing groundfish, vessels tendering groundfish, and support vessels assisting other groundfish vessels (see 679.4).

Federal Processor Permits are required for any shoreside processor or any stationary floating processor (see 679.4).

Groundfish includes but may not be limited to pollock, Pacific cod, sablefish, Atka mackerel, rockfish, smelt, eulachon, capelin, sharks, skates, sculpins, octopus, squid, and any species of flatfish except Pacific halibut (see 50 CFR 679.20(a)(2)).

Processing or **to process** means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting (see yearly specifications under 50 CFR 679.20(a)(2)).

Specific Instructions

BLOCK A - PERMIT APPLICATION INFORMATION

Please indicate the type of permit for which you are applying: Federal Fisheries Permit or Federal Processor Permit.

Applicants for a Federal Fisheries Permit must complete Block B, Block C, Block E, and sign and date in Block G (see corresponding block instructions for details).

Applicants for a Federal Processor Permit must complete Block B, Block C (stationary floating processors) **or** Block D (shoreside processors), Block E, and sign and date in Block G (see corresponding block instructions for more details).

Applicants planning to participate in the Pacific cod, pollock or Atka mackerel fisheries using any gear type other than jig gear must complete Block F.

If this application is being submitted in order to amend an existing Federal Fisheries or Federal Processor Permit, answer yes, then provide your current Federal Fisheries or Federal Processor Permit number.

BLOCK B - OWNER INFORMATION

1. Enter the full name(s) of the owner(s) of the vessel or stationary floating processor listed in Block C; or the owner of the shoreside processor listed in Block D.

Note: If there is more than one owner, list the principal owner first. The permit will be issued to the first owner listed, with an *et al.* notation. The permit MUST be issued to the owner of the vessel or stationary floating processor, not operators or lessees.

2. Enter your complete **permanent** business mailing address, including street or P.O. Box, state, and zip code. Your permit will be sent to this address. If you need to have your permit sent to a different address, please enter your **permanent** business address on the application and attach a note with your alternate address.

3. Enter Social Security number or tax identification number.

Privacy Act Statement: Federal regulations at 50 CFR part 679 authorize collection of this information. This information is used to verify the identity of the applicant(s) and to accurately retrieve confidential records related to federal commercial fishery permits. Where the requested information is a Social Security number (SSN), disclosure is voluntary; in the event it is not provided, NMFS will assign a unique code that will identify the records.

4. Enter a business telephone number, including area code, that is used by the vessel or processor owner. It is very important that you provide a number where we can contact you, or where we can leave messages for you. If questions arise concerning your application and we cannot contact you by phone, issuance of your permit will be delayed.

- 5-6. Enter a business fax number (including area code) and business e-mail address, if any.

7. Enter the name of any company (other than the owner) that manages the operations of your vessel or processor.

BLOCK C - VESSEL OR STATIONARY FLOATING PROCESSOR INFORMATION

Complete this block if you are requesting a Federal Fisheries Permit for a vessel **or** a Federal Processor Permit for a stationary floating processor.

1. Enter the complete vessel name as displayed in official documentation.
2. Enter the home port (city and state) as recorded in official documentation.
3. Enter U.S. Coast Guard documentation number (example: 566722).
4. Enter 5-digit State of Alaska Department of Fish & Game (ADF&G) vessel registration number (example: 51233).
5. Enter the ADF&G Processor Code.
6. Enter the vessel's length overall (LOA) in feet and registered length in feet.
The **LOA** of a vessel means the centerline longitudinal distance, rounded to the nearest foot, measured between: (a) the outside foremost part of the vessel visible above the waterline, including bulwarks, but excluding bowsprits and similar fittings or attachments, and (b) the outside aftermost part of the vessel visible above the waterline including bulwarks, but excluding rudders, outboard motor brackets, and similar fittings or attachments.
7. Enter registered gross tonnage (U.S. tons) and net tonnage (U.S. tons) as stated in official documentation.
8. Enter the shaft horsepower.
9. Answer yes or no if this vessel is a vessel of the United States.
10. Answer yes or no if this vessel is to be used as a stationary floating processor.

BLOCK D - SHORESIDE PROCESSOR INFORMATION

Complete this block if you are requesting a Federal Processor Permit for a shoreside processor.

1. Enter name of the shoreside processor that is receiving or processing groundfish harvested in the Gulf of Alaska (GOA) or the Bering Sea/Aleutian Islands (BSAI).
2. Enter business address of the shoreside processor listed in Block D, question 1.

3. Enter the physical location of the plant at which the shoreside processor listed in Block D, question 1 is operating. **DO NOT LIST POST OFFICE BOX NUMBERS.** Also indicate if this processor is replacing a previous processor at this facility and/or if there are multiple processing businesses at this facility.
4. Indicate if the applicant in Block B owns the plant at which the shoreside processor listed in Block D, question 1 is operating.
5. Enter the ADF&G Processor Code.
6. Enter the business telephone number, including area code.
7. Enter the business facsimile number, including area code.
8. Enter the business e-mail address of the shoreside processor, if available.

BLOCK E - PERMIT INFORMATION

1. **Area of operation.** Check one or both areas of operation (GOA or BSAI) to indicate the areas of operation for which you are requesting.
2. **Federal Fisheries Permit.** If requesting a Federal Fisheries Permit, indicate one or a combination of the vessel operation categories (see 50 CFR 679.4(b)(3)) in the groundfish fisheries for which you are requesting.

Catcher Vessel - A vessel that is used for catching fish and that does not process fish onboard.

Catcher-Processor - A vessel that is used for catching fish and processing that fish.

Mothership - A vessel that receives and processes groundfish from other vessels.

Tender Vessel (buying station) - A vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor, stationary floating processor, or mothership.

A vessel permitted as a catcher vessel, catcher-processor, mothership, and/or tender vessel may conduct all operations authorized for a support vessel.

Or check:

Support Vessel - Any vessel that is used in support of a permitted vessel, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish.

A vessel permitted as a support vessel may not conduct activities as a catcher vessel, catcher-processor, mothership, and/or tender vessel.

Recordkeeping and reporting requirements stipulated at 50 CFR part 679.5 must be followed. A logbook and appropriate forms will be sent each year to the owner of each catcher vessel greater than 60 ft LOA, mothership, and catcher-processor, that is issued a Federal Fisheries Permit for that year. A support vessel is not required to maintain recordkeeping and reporting.

3. **Federal Processor Permit.** If requesting a Federal Processor Permit, indicate whether a shoreside processor or a stationary floating processor (see 50 CFR 679.2).

Shoreside Processor - Any person or vessel that receives unprocessed fish, except catcher-processors, motherships, buying stations, restaurants, or persons receiving groundfish for use as bait or personal consumption.

Stationary Floating Processor - A vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

Recordkeeping and reporting requirements stipulated at 50 CFR part 679.5 must be followed. A logbook and appropriate forms will be sent each year to the owner of each shoreside processor and stationary floating processor that is issued a Federal Processor Permit for that year.

4. **Gear Type.** If permit request is for a catcher vessel or catcher-processor, indicate the gear type(s) used for groundfish operations.

5. **Inshore/offshore allocation.** If a mothership or catcher-processor is operating in the GOA (see 50 CFR part 679.2), check whether inshore or offshore. All vessels are part of the offshore component except:

Vessels less than 125 ft LOA that process no more than 126 metric tons per week in round-weight equivalents of an aggregate of pollock and Pacific cod;

Vessels that process pollock or Pacific cod, harvested in a directed fishery for those species, at a single geographic location in Alaska State waters during a fishing year.

You must make a selection even if at this time you do not expect to process these species. Once selected, the component may not be changed within the fishing year. However, it may be changed for the next fishing year by submitting an application for permit amendment prior to the beginning of that fishing year. For more information on the inshore/offshore regulations, contact Sustainable Fisheries Division toll free at (800) 304-4846 (select option #3) or (907) 586-7228.

BLOCK F - PACIFIC COD, POLLOCK, ATKA MACKEREL FISHERIES

If you plan to participate in the directed fisheries for Pacific cod, pollock and/or Atka mackerel with any gear other than jig gear your federal fisheries permit must be endorsed for these species in the area(s) in which you plan to participate.

Vessels participating in these directed fisheries in the EEZ off Alaska are required to have on board and use a Vessel Monitoring System (VMS) while the directed fisheries are open.

NMFS has implemented a system of "platoon" management for Atka mackerel fishing in Steller sea lion critical habitat, as set forth in 50 CFR 679.22(a)(7), (a)(8), and (b)(2) and 50 CFR 223.202, in statistical areas 542 and 543 (central and western AI). A lottery performed by NMFS, Alaska Region will determine placement in either 542 or 543 in " platoons" in each of two seasons (A season and B season). Once an endorsement is elected, it remains valid until amended (or the permit expires or is revoked, suspended, etc.). If registered to fish Atka mackerel in 542 or 543 the vessel may not participate in any other groundfish fishery in the BSAI or GOA until their first assigned directed fishery in critical habitat is closed to directed fishing. Changes to the Atka mackerel fisheries registration must be received, in writing, by NMFS/RAM no later 30 days prior to the start of the A or B season.

BLOCK G - SIGNATURE

The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of the his/her knowledge and belief. The application will be considered incomplete without this signature.

Special Handling of Permits

Please allow at least 10 days for processing your permit. **Do not wait until right before an opening to apply for your permit**, as you may not receive it on time. You may FAX your permit application to us at (907) 586-7354, but a permit cannot be faxed back to you.

If you would like to have your permit sent by a method other than regular mail, please attach a note indicating a method, and follow the appropriate procedure below.

Express Mail. If you would like to have your permit sent to you by U.S. Postal Express Mail, determine from the table below the weight and dimensions of the appropriate documents. Send us an express mail envelope with the correct amount of postage prepaid or send express mail stamps UNATTACHED to an envelope. **NOTE:** If the express mail envelope you send is too small or the postage attached is less than the amount required, your permit and logbook will be sent to you by regular U.S. mail.

Other Express Carriers. If you would like to have your permit sent to you by a private express carrier, e.g., Federal Express, UPS, DHL, etc., submit your account number and name of carrier or a prepaid envelope with the permit application.

A logbook and appropriate forms will be sent each year to the owners shown on Federal Fisheries and Federal Processor Permits (except support vessels). The approximate size and weight of each logbook is given below.

	Dimensions (inches)	Weight (lb,oz)
Catcher vessel, trawl gear logbook	11 x 12	3.4
Catcher vessel, longline, or pot gear logbook	11 x 15	4.0
Catcher-processor, trawl gear logbook	11 x 12	3.0
Catcher-processor, longline, or pot gear logbook	11 x 15	3.6
Mothership logbook	11 x 12	3.0
Shoreside processor logbook	11 x 17	5.0

Other Fisheries and Licenses

Salmon Power Troll - State of Alaska Interim Use and Limited Entry Power Troll licenses serve as a federal permit.

If you do not currently possess either State license, a federal permit may be issued provided that sometime during the years 1975-1977, you: a) operated a vessel in the 3-200 mile zone off Alaska; b) engaged in commercial fishing for salmon from that vessel in the 3-200 mile zone off Alaska; AND c) landed salmon caught with power troll gear. If you believe that you meet these conditions, please call RAM toll free at (800) 304-4846 (select option #2) or (907) 586-7202 (select option #2). You will be required to provide fish tickets or other landing receipts showing compliance with the above requirements.

Individual Fishing Quota (IFQ) Fisheries - An IFQ permit is required to catch and retain sablefish with fixed gear in federal waters (3-200 miles), and an IFQ permit and International Pacific Halibut Council (IPHC) license are required to catch and retain Pacific halibut from IPHC Convention waters (the internal waters and territorial sea of Alaska and all federal waters seaward of Alaska). Owners of vessels must have a Federal Fisheries Permit to retain groundfish, including sablefish, in federal waters. More information and application forms on this program are available on the NMFS Alaska Region's web site at <www.fakr.noaa.gov>. Or you may call RAM toll free at (800) 304-4846 (select option #2) or (907) 586-7202 (select option #2). For more information on IPHC licenses, call IPHC at (206) 634-1838.

High Seas Fishing Compliance Act - U.S. vessels fishing on the high seas are required to obtain a High Seas Fishing Compliance Act permit. More information and the application form is available on the NMFS Alaska Region's web site at <www.fakr.noaa.gov>. Or you may call RAM toll free at (800) 304-4846 (select option #2) or (907) 586-7202 (select option #2).

Tanner Crab and King Crab - State of Alaska area registration serves as the required federal area registration for catcher vessels.

State of Alaska Permits - Call the Commercial Fisheries Entry Commission at (907) 789-6150 for information on State of Alaska permits and regulations.

PUBLIC REPORTING BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 0.35 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NOAA, National Marine Fisheries Service, Alaska Region, Attn: Assistant Regional Administrator, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99802-1668.

ADDITIONAL INFORMATION

Before completing this form please note the following: 1) The NMFS may not conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) This information is mandatory and is required to manage commercial fishing effort in the GOA and BSAI under 50 CFR 679 and under 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics. These procedures have been implemented under the NMFS Operations Manual entitled, "Data Security Handbook for the Northwest-Alaska Region, National Marine Fisheries Service."

- (i) the Secretary applies such prohibition to such species at the request of the State, or
- (ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.-The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.-

(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

INTERAGENCY COOPERATION

Sec. 7.

(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.-

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(b) OPINION OF SECRETARY.-

(1)

(A) Consultation under subsection (a)(2) with respect to any agency action shall be

concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency;

(B) in the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)-

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth-

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation;
and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)

(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that-

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title;

the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that-

(i) (i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or

applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) BIOLOGICAL ASSESSMENT.-

(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) LIMITATION ON COMMITMENT OF RESOURCES.-After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)

(1) ESTABLISHMENT OF COMMITTEE.-There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)

(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)

(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)

(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS.-Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to-

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.-

(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under

subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)

(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly

(i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and

(ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary

(A) determine that the Federal agency concerned and the exemption applicant have-

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A) (i), (ii), and (iii). The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing-

(A) the availability of reasonable and prudent alternatives to the agency action, and

the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) EXEMPTION.-

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person-

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that-

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)

(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action-

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless-

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not

identified in any biological assessment conducted under subsection (c), and
(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) REVIEW BY SECRETARY OF STATE.-Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS.-An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): Provided, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) COMMITTEE ORDERS.-

(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.-The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.-Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.-

Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section-

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS. In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

INTERNATIONAL COOPERATION

Sec. 8.

(a) FINANCIAL ASSISTANCE.-As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.-In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State shall encourage-

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) PERSONNEL.-After consultation with the Secretary of State, the Secretary may-

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants, and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.-After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.